IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.979-SB of 2005

Date of Decision: February 07, 2007

Kikkar Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.S.S.Sidhu, Advocate,
for the appellant.

Mr.M.C.Berry, Senior DAG, Punjab,
for the State.

*****

RANJIT SINGH, J.

Kikkar Singh, who stands convicted for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the `Act') and sentenced to undergo ten years rigorous imprisonment, has filed this appeal impugning the conviction and the sentence awarded to him by the Special Court, Bathinda.

The facts, in brief, are that on 23.3.2001, HC Gulzar Singh informed

PW-2 Gurdeep Singh, Investigating Officer that he had received a secret information to the effect that appellant Kikkar Singh, working as Chief Sewadar at Gurudwara Jandsar Sahib, had sown poppy plants, which he had cut and put in a car bearing registration No.DDU-4326. Taking this to be a believable information, a ruqa, Exh.PE, was sent to the police station, on the basis of which FIR, Exh.PE/1, was registered. Police party joined one Mehar Singh, a man from public, as an independent witness. DSP Phul (PW-1) also reached alongwith SI Parlad Singh and joined the police party. A Naka was laid and kacha passage leading to Gurudwara Jandsar Sahib was blocked. Maruti Car bearing registration No.DDU-4326 driven by appellant Kikkar Singh was accordingly intercepted. DSP informed the appellant that police party had a suspicion that some contraband was lying in the car. Introducing himself as DSP, the appellant was apprised that if he so required, the search could be conducted in the presence of a Magistrate or before DSP or any other gazetted officer. The appellant, however, reposed faith and confidence in the DSP and opted for search of the car in the presence of said gazetted officer. The record in this regard is contained in memo, Exh.PA. On search of the car, a bundle was recovered. When opened, green poppy plants were recovered, which on weighment, were found 60 Kgs. 250 grams was separated as a sample and converted into a parcel. The remaining poppy plants were put in four different bags. Making these into a parcel, these four bags were sealed by the Investigating Officer with the impression `GS'. Sample seal was also prepared and after use was entrusted to independent witness Mehar Singh. The contraband and the car were

taken into possession vide memo, Exh.PB. On personal search of the appellant, a sum of Rs.200/- was recovered. The appellant was also apprised about the grounds of his arrest. Registration certificate of the car was handed over by the appellant, which showed that the same was registered in the name of Shri Ram Lal Taneja. Some other papers showing receipt of the purchase of the car in the name of the appellant and two forms bearing No.29 and 30 were also recovered alongwith the RC. All these papers were taken in possession vide memo Exh.PG and special report in this regard was forwarded. The car and the contraband produced before the Magistrate were directed to be kept in the police malkhana because of lack of place in the judicial Malkhana. Sample parcel of the contraband recovered was sent to the Chemical Examiner on 29.3.2001 and the same was deposited with the Chemical Examiner on 30.3.2001. Chemical examination report, when received, revealed that the samples were that of poppy heads. Charge having been framed, the appellant faced trial on the plea of not guilty.

Prosecution examined PW-1 Amrik Singh, DSP, PW-2 SI Gurdeep Singh, Investigating Officer, PW-3 C.Surinderpal and PW-4 MHC Nirmal Singh besides tendering the chemical examination report. Independent witness was, however, given up.

After close of the prosecution, all the incriminating circumstances were put to the appellant. The appellant took up the defence of denial and pleaded that he was innocent. He also denied that the contraband was recovered from him. As per the appellant, he was working as Mahant-Cum-Mukh Sewadar of the Gurudwara, which had 17 acres of agriculture land in the name of Gurudwara.

Appellant further disclosed that Shri Sikander Singh Malooka of village Malooka, who was the then Cabinet Minister in the Government of Akali Dal Badal and his supporter Satnam Singh, SGPC Member belonging to village Bhai Rupta, were keen to take over the Gurudwara Jandsar Sahib under SGPC. The appellant refused to hand over the custody of this Gurudwara to SGPC and it is in this background that, at the instance of Sikander Singh Malooka aforesaid, the appellant was picked up on 22.3.2001 in the presence of some persons. The appellant also claimed that he was forced and tortured by the police to hand over the Gurudwara to SGPC and when he refused to do so, this false case was planted on him. The appellant examined three defence witnesses, namely, Mehar Singh, Nek Singh and Hardit Singh to substantiate his plea.

The Special Court, Bathinda on appreciation of evidence, came to the conclusion that the prosecution was able to prove the charge against the appellant beyond shadow of reasonable doubt. The appellant was accordingly found guilty of the charge and sentenced to suffer ten years rigorous imprisonment and pay a fine of Rs.one lac.

Mr.S.S.Sidhu, the learned counsel appearing for the appellant initially raised number of pleas to challenge the verdict of the trial court. He accordingly emphasised that the case was registered on the basis of a secret information, but no report, as required under Section 42 of the Act, was ever sent. The counsel also pointed out that the secret information in this case was received by HC Gulzar Singh, but he was not examined by the prosecution. Even the independent witness, stated to have joined at the time of

recovery, was given up, who accordingly was subsequently produced by the defence. While appearing as a defence witness, Mehar Singh clearly deposed that no recovery was effected from the appellant in his presence and rather his signatures had been obtained on some blank papers in the police station. Other submissions regarding tampering of seal and the plants recovered, not falling under the definition of poppy straw or poppy husk attracting the provisions of the Act, were also raised. Majority of these submissions now made, apparently were not raised before the trial court.

In addition to this, the learned counsel for the appellant, while referring to the evidence, pointed out that the prosecution was not able to establish that the contraband recovered was 60 Kgs. In this regard, he referred to the statement of SI Gurdeep Singh (PW-2) in detail. Having given the background in which he received information leading to recovery of the contraband, PW-2 stated that “I weighed the poppy plants which were 60 Kgs. alongwith plastic sheet, out of which 250 grams poppy plants were separated as sample and prepared separate sample parcels.” While under cross-examination, however, this witness clearly conceded that the weight of the plants, which was then found 60 Kgs. was now about 20 Kgs. or 30 Kgs. His evidence in this regard reads “Today the weight of plants is very much less than 60 Kgs. It may be 20 Kgs or 30 Kgs because they are dry.” This witness further conceded, during cross-examination, that the poppy plants when recovered were green and that they were having leaves, stam and heads. As per this witness, the plants had been weighed with the help of a spring balance. The length of the balance was about 3/3-1/2 feet. Though it may sound

strange but would be worth notice that the car from which the plants were allegedly recovered was found not in working condition when produced in the court and was brought on a peter-rehra. Having regard to the evidence of PW-2, as afore-mentioned, the counsel for the appellant contends with great vehemence that prosecution was unable to establish that the quantity recovered was 60 Kgs., as alleged. He accordingly pleads that this is a case where the prosecution was un-successful in proving the recovery of a non-commercial quantity from the appellant. As per evidence, the quantity recovered was 20 Kgs. or 30 Kgs. The counsel would chid that the assertion of the witness that the poppy had dried by now and would say that it cannot be accepted. He would point out that the sample, which was taken and sent for examination, was not found to have dried and was weighing almost same as was sent, meaning thereby that the story of poppy plants having dried to weigh 20 to 30 Kgs. has to be taken with pinch of salt and required to be discarded. The counsel accordingly pleads that the appellant would be justified for lenient sentence as the quantity recovered even if proved would be commercial being 20 to 30 Kgs and thus it would not be a case where award of minimum sentence prescribed is called for.

Mr.M.C.Berry, learned Senior Deputy Advocate General appearing for the State, when confronted with this position and the evidence that has been referred to above, could not seriously dispute that the prosecution was unable to satisfactorily establish the weight of the quantity recovered being 60 Kgs. of poppy husk/straw.

This submission made on behalf of the appellant appears

justified, Though PW-2 initially submitted that the quantity recovered was 60 Kgs., but he clearly conceded before the court that the contraband produced before the court was not 60 Kgs., but was much less. He further conceded that it may be 20 Kgs. or 30 Kgs. It is on record that the contraband recovered and weighed was inclusive of plants. It is in the evidence that weighment of the contraband was inclusive of plants and was done with the help of spring balance. The star witness, PW-2 conceded before the court that the weight of the quantity was much less and may be between 20 Kgs. to 30 Kgs. Can a weight of contraband recovered reduce to almost half on drying is a question that may require serious thought and consideration? It may be possible to say that the poppy plants, on becoming dry, would reduce in weight but it would rather be difficult to accept that it would do so to the extent as brought out. If one was to so assume then it may well be possible to urge that in fact the quantity recovered was not 60 Kgs. and rather less. It may then also be a question that poppy straw or poppy plants were not as recovered but were weighed including plants and stams etc. The counsel for the appellant would be justified in submitting that the prosecution was un-successful in proving the case against the appellant for recovery of a non-commercial quantity. Since the weight of the contraband recovered from the appellant was found to be 20 Kgs. or 30 Kgs., as per the evidence of prosecution, it would be reasonable to say that quantity recovered from the appellant was a commercial quantity. If that be so, then the sentence awarded to the appellant would get affected and may not stand. It would have the resultant effect not only on the sentence of rigorous imprisonment but

also on the fine imposed on the appellant.

Without going into other submissions made on behalf of the appellants on merits of the case, I am inclined to hold that the prosecution did not succeed in proving that the quantity of contraband recovered from the appellant was 60 Kgs. Since the evidence now shows that the same was only 20 Kgs. or 30 Kgs., it would be safe to hold that the alleged quantity recovered was commercial in nature. Accordingly, while up-holding the conviction of the appellant, I would sentence the appellant to suffer rigorous imprisonment for a period of two years with fine of Rs.20,000/-.

Subject to the above observations, the appeal would stand dismissed.

February 07, 2007 (RANJIT SINGH)
ramesh JUDGE